IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.389 OF 2005

Bharat Sanchar Nigam Ltd. ... Petitioner.

vs.

M/s.Eskay Engineers & Another. .... Respondents.

Ms.Neeta V. Masurkar, for Petitioner.

Mr.S.C.Gupte i/b. Mr.V.L.Panjuani, for Respondent no.1.

CORAM: D.K.DESHMUKH,J.

DATED: 9th January, 2006

P.C.:-

1. Heard the learned Counsel for both the sides. Perused the Award. Perusal of the operative part of the Award shows that the learned Arbitrator has accepted averments that were made by the petitioner on the basis of the report of the vigilance and the learned Arbitrator has directed to make the payment to the respondent no.1 as per the report of the verification committee which was constituted by the petitioner itself.

2. The case of the petitioner before the learned Arbitrator was that the report of the verification committee was incomplete and therefore, the payment should not be made pursuant to that report. If that is so it was for the petitioner to apply before the learned Arbitrator for appointment of the Commissioner to carry out verification. Though it was orally submitted before me that such an application was made before the learned Arbitrator, it was submitted that there is no such ground raised in petition and therefore, obviously such ground cannot be permitted to be argued.

3. There is also an application for amendment in the petition made, but that application is made beyond the period of limitation provided in the Arbitration and Conciliation Act,1996. Therefore, as per the judgment of the Division Bench in the case "Vastu Invest & Holdings Pvt. Ltd. Mumbai Vs. Gujarat Lease Financing Ltd. Mumbai 2001(2) Mh.L.J. 565" the amendment in the petition cannot be allowed. I find that though it is an admitted position that the respondent no. 1 had carried out the work and that it is required to be paid, the petitioner did not have any report on the basis of which it was willing to make payment. The verification committee was appointed by the petitioner itself. The petitioner was not willing to make payment even according to the report of the committee. Taking overall view of the

matter therefore, I do not find that the Award violates any public policy of the India as claimed by the petitioner. The petition has no substance. The petition is disposed of.